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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,045	07/25/2003	Andre Linnenbrugger	3191/11394-US1	4032
7278	7590	01/26/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			CHARLES, MARCUS	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,045

Applicant(s)

LINNENBRUGGER ET AL.

Examiner

Marcus Charles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) 7,8,11 and 12 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9, 9-10 and 13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/24/03 & 3/25/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This is the first action on the merit relating to serial application number 10/628,045, filed 07-25-2003. Claims 1-13 are currently pending.

Election/Restrictions

1. Applicant's election of species 4, to figs 2-5 and 6 (claims 1-6, 9-10 and 13) in the reply filed on 11-12-2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 7-8 and 11-12 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11-12-2004

Priority

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/844,087, on 04-27-2001.

Drawings

4. The examiner has accepted the drawing filed with this application.

Specification

5. The disclosure is objected to because of the following informalities: In page 34 and 39, line 25 and 20, respectively, "18" should be "16". Note "16" is a window section and not "18". In addition, the sub-title "Cross Reference to related Cases" must

be updated to include U.S. application serial number 09/844,087 has a patent no. 6,695,731. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; and it is unclear as to if the limitation after the term is claimed or is a reminder. In claim 13, the phrase "particularly" renders the claim indefinite because the claim is referring to a use that is not claimed. In section (b) the phrase "if any" is unclear and confusing

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 5-6 and 13, are rejected under 35 U.S.C. 102(b) as being anticipated by Wolf (5,427,583). In claim 1 and 5, Wolf (5,427,583) discloses a link chain having inner and outer sides and comprising a plurality of pairs of neighboring links (1/10) and being pivotable to each other; a plurality of pairs of coupling units (3), each pair

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pivotably connecting respectively pairs of links together; each unit including adjacent coupling elements and the plates having elongated windows and first and second end portions, the end portions of the plates being different from each other and the coupling units extending through the windows of the respective plates.

In claim 6, note the pitches (a) are different from the pitches (b).

In claims 13, it is apparent that the method steps are inherently included during the assembling of Wolf device.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf. In claims 2-4, Wolf discloses the claim invention including the coupling being rockable about axes normal to the respective link plates and the couplings having round external surfaces contacting the rounded internal surfaces of the link plates. Wolf does not disclose the ratio of rounded surface radii of curvature of the external surface of coupling and that of the rounded internal surface of the links is less than ten. It would have been obvious to one of ordinary skill in the art to have the ratio of the rounded surfaces of Wolf device less than ten, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

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12. In claims 9-10, Wolf discloses the claimed invention but does not disclose that one of the chain links being pivotable relative to the other through a first maximum angle and the chain of another pair being pivotable through a different second maximum angle and the ratio of the angles and the pitches satisfying a particular equation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chain of Wolf so the pivoting angles are different so as to satisfy the ranges of the inequality of the claim invention to obtain a range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Conclusion


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Steuer (4,344,761), Skurka et al. (5,192,252), Zimmer (4,718,880), Krempa (4,555,014), Ivey et al. (5,073,154), Greiter (6,558,281) and Linnenbrugger et al. (6,346,058) disclose a chain having links with different lengths and pitches.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus Charles whose telephone number is (703) 305-6877. The examiner can normally be reached on Monday-Thursday 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on (703) 308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Marcus Charles
Primary Examiner
Art Unit 3682
January 24, 2005